

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:)
Hassan MOSTAFAVI) Group Art Unit: 3777
Serial No.: 10/678,741) Examiner: Ramirez, John Fernando
Filed: October 3, 2003) Confirmation No. 6107
For: METHOD AND SYSTEM FOR)
RADIATION APPLICATION)

)

NOTICE OF APPEAL & REQUEST FOR PRE-APPEAL BRIEF CONFERENCE

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir / Madam:

In response to the Advisory Action mailed February 22, 2011, Applicant herein submits a Notice of Appeal pursuant to 37 C.F.R. § 41.31(a), and respectfully requests a pre-appeal brief conference.

I. Claim amendments for claims 56 and 103.

In the previous response, claims 56 and 103 were amended to incorporate limitations from respective claims 93 and 104, and claims 93 and 104 were accordingly canceled. However, the Examiner did not enter the claim amendments. Applicant believes that since the claim amendments introduced no new matter, and did not necessitate any new search, the amendments should have been entered. Also, contrary to that stated in the Advisory Action, the claim amendments do in fact reduce and simplify issues for an appeal because the claim amendments canceled two dependent claims, and incorporated the limitations from the canceled claims into

their respective dependent claims without adding any new matter. For the purpose of this request for pre-appeal brief conference, Applicant herein assumes that the previous amendments are not entered. However, Applicant requests that the panel overrules the Examiner on the issue of claim amendments, and enters them for the purpose of the appeal because the amendments would simplify and reduce issues for the appeal.

II. Claim rejections under 35 U.S.C. § 102.

Claims 56, 61-63, 66-67, 81, 93, and 103-104 stand rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent No. 7,006,862 (Kaufman). Applicant respectfully notes that in order to sustain a claim rejection under § 102, each of the claim elements must be found, either expressly or inherently, in the cited reference.

Claims 93 and 104

Claim 93 recites that the image data corresponds with a phase value of a *breathing cycle* (Emphasis Added). Claim 104 recites similar limitations. Kaufman does not disclose or suggest the above limitations. In particular, the system of Kaufman is specifically designed to deal with heart motion, not breathing motion. This is supported by the Examiner's characterization on page 4 of the Office Action, which states "the method of Kaufman et al. is specific to synchronizing with respect to phases of the *cardiac cycle*. . ." (Emphasis Added). Thus, there is nothing in Kaufman that discloses or suggests any breathing cycle, much less, a phase value of a breathing cycle, or that a cardiac cycle is equivalent to a breathing cycle (which is not true).

Notably, Kaufman discloses *breath holding* (see column 5, lines 51-54, and column 3, lines 5-12, where Kaufman teaches a technique for dealing with irregular heartbeat due to breath holding). Therefore, Kaufman clearly does not disclose or suggest any breathing motion, much

less a breathing cycle. For at least the foregoing reasons, claims 93 and 104, should be allowable over Kaufman.

Claim 93 also recites that the image phase value is *calculated using the phase value of the breathing cycle* (Emphasis Added). Claim 104 recites similar limitations. Kaufman also does not disclose or suggest these limitations. As an initial matter, it is important to note that the claims require two variables – i.e., (1) a breathing cycle phase value, and (2) an image phase value that is calculated using the breathing cycle phase value. Kaufman does not disclose the combination of these two variables, much less, these two variables in the relationship as described in the claims.

As discussed, Kaufman does not disclose or suggest any breathing cycle, and thus, Kaufman certainly also does not disclose or suggest any calculation that is performed using a breathing cycle phase value.

According to the Office Action, column 16, lines 38-43 and 54-67 of Kaufman allegedly disclose calculating an image phase value using the phase value of the breathing cycle. However, these cited passages actually disclose:

From the Fourier transformation, the software can determine the fundamental frequency of the heart and generate images of the heart in different phases of the heart cycle. As will be described below, the user can display a plurality of projection images of the heart, in which each of the images corresponds to a different phase of the heart cycle.

To determine the phase of each of the slices, (e.g., to determine which slices correspond to diastole), a local intensity signal of the slice images can be run through a derivative filter to produce a graph such as FIG. 13. Generally, this method can be used in conjunction with the results from Fourier analysis, as described above, to find the size of the heart in each of the slice images. With the frequency derived from Fourier analysis and phase from the local maxima, slice selection can be extended beyond the ROI of Step 206. It should be appreciated however, that it may be possible to use the local intensity profile as an

independent algorithm. In such embodiments, the user would need to cover all slices with the selected region of Step 206.

Based on the above evidence, Kaufman clearly does not disclose or suggest any *breathing cycle*, nor does Kaufman disclose or suggest any calculation (of an image phase value) that is performed *using a breathing cycle phase value*.

For the sake of argument, even assuming that the cardiac cycle of Kaufman is somehow a breathing cycle (which is clearly incorrect), Kaufman still does not disclose or suggest calculating an image phase value using a cardiac/breathing cycle phase value. As evidenced from the above cited passages of Kaufman, Kaufman teaches determining a phase of a heart cycle (cardiac cycle phase value), and adopts such phase value itself as the phase for the image slice. However, once the cardiac cycle phase value is determined, Kaufman does not disclose or suggest performing any *calculation* using the determined cardiac cycle phase value to determine another variable (i.e., to determine the claimed “image phase value”). This is because in Kaufman, the determined cardiac cycle phase value itself is the phase for the image, and therefore, Kaufman clearly does not disclose or suggest *calculating* an image phase *using the cardiac/breathing cycle phase value*. As discussed, the claims require two variables – i.e., (1) a breathing cycle phase value, and (2) an image phase value that is calculated using the breathing cycle phase value. Kaufman simply does not disclose the combination of these two variables, much less, these two variables in the relationship as described in the claims.

Furthermore, to the extent that the Examiner is considering the “phase” of the image slice (in column 16, line 54 of Kaufman) to be the claimed “image phase value”, Kaufman still does not disclose or suggest the above limitations. This is because claims 93 and 104 require that the “image phase value” be *calculated using the breathing cycle phase value*. On the other hand,

the “phase” of the image slice in Kaufman is itself the cardiac cycle phase value. Thus, the phase of the image slice in Kaufman is clearly not *calculated* using the cardiac cycle phase value, and is certainly not calculated using any *breathing cycle* phase value (because Kaufman is completely silent regarding any breathing cycle phase value).

For these additional reasons, claims 93 and 104, and their respective dependent claims, should be allowable over Kaufman.

Claims 56 and 103

As discussed, Applicant believes that the previous amendments to incorporate limitations from claims 93 and 104 to claims 56 and 103, respectively, should have been entered. Should the Panel find the subject matter of claims 93 and 104 distinguishable from Kaufman based on the above arguments, Applicant respectfully requests that the Panel enters the previous amendments, and allows claims 56 and 103, and their respective dependent claims.

The Commissioner is authorized to charge any fees due in connection with the filing of this document to Vista IP Law Group’s Deposit Account No. **50-1105**, referencing billing number **VM 03-035-US**. The Commissioner is authorized to credit any overpayment or to charge any underpayment to Vista IP Law Group’s Deposit Account No. **50-1105**, referencing billing number **VM 03-035-US**.

Respectfully submitted,

DATE: March 8, 2011

By: /Gerald Chan/
Gerald Chan
Registration No. 51,541

VISTA IP LAW GROUP, LLP
1885 Lundy Ave., Suite 108
San Jose, California 95131
Telephone: (408) 321-8663 (Ext. 203)
Facsimile: (408) 877-1662